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Garnishing Joint Accounts – Pitfalls for the Depository Bank

The Minnesota Supreme Court recently held that a judgment creditor could not obtain funds in a debtor's joint account which were traceable to a non-debtor. In *Enright v. Lehman*, No. A06-347 (Minn. July 19, 2007), the judgment creditor garnished a bank account in which the debtor and his non-debtor wife were joint tenants. Pursuant to the garnishment, the bank paid the funds in the accounts to the creditor's attorney. The debtor asserted that all of the funds in the accounts belonged to his spouse and were not subject to garnishment.

Relying upon the Multi-Party Account Act (Minn. Stat. § 524.6-203(a)), the Minnesota Supreme Court ruled that the funds traceable to the non-debtor spouse are not subject to seizure. The Court noted that " in a controversy between parties to a multi-party account and their creditors, funds in a joint account belong to the parties in proportion to their net contributions…." Further, in order to seize any funds contributed by the non-debtor, the judgment creditor would be required to prove by clear and convincing evidence (a very high standard) that the non-debtor spouse intended any funds she deposited to belong to the debtor.

This case raises several potential issues for the depository bank. In particular, banks should be concerned about the potential for a non-debtor account owner to assert a claim against the bank for an unauthorized taking of the funds in a joint account. This concern can arise in both garnishment and setoff situations.

Garnishment. When the bank receives a garnishment summons on a joint account, it will need to determine the appropriate way to respond to the garnishment. The bank is required by law to retain the garnished funds. The problem arises in determining what funds in the joint account should be held pursuant to the garnishment.

In most cases, the bank will not have any information regarding who contributed the funds in the account. This creates a dilemma for the bank. If the entire account balance is held by the bank in response to the garnishment, the non-debtor owner of funds may have a claim for damages resulting from the failure of the bank to honor checks drawn by the non-debtor on his or her funds in the account. On the other hand, if only some or none of the funds in the account are held because of the uncertainty, the bank may be liable to the creditor for its failure to hold the funds. Additionally, because these are intentional acts of the bank, it is possible that the bank could be liable for punitive damages in these circumstances.

Minnesota law contains a safe harbor for the garnishee that provides "… the garnishee is not liable for damages to the debtor … or other person for wrongful retention if the garnishee retains … the property of the debtor or any other person … if the garnishee has a good faith belief that the property retains is subject to the garnishment summons." Minnesota Statutes 571.73, subd. 2. Uncertainty arises in light of the *Enright* decision – can the garnishee claim good faith in retaining the entire balance in a joint account if the law is clear that ownership is in proportion to the respective contributions to the account by the owners? Unfortunately, there is no "correct" answer to that question and the statute does not give guidance as to the definition of "good faith."

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Setoff. In light of the foregoing discussion, it is reasonable to ask whether the *Enright* case affects the bank's right of setoff. Unfortunately, the answer may well be a qualified "yes." Under the Multi-Party Account Act ("MPAA") a financial institution retains the right of setoff. Section 524.6-212 of the MPAA provides that "[w]ithout qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the …."

So, how much of the joint account balance is available for setoff? Section 524.6-212 goes on to state that the "amount of the account subject to setoff is that proportion to which the debtor is … beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal." Reliance has been placed on the *Park Enterprises* case (decided in 1951) as support for the ability to setoff against the entire joint account balance when there is a provision in an account agreement providing that each depositor has the ability to withdraw the entire balance in a joint account. The Enright case concludes that the *Park Enterprises* case is overridden by the later adoption of the Multi-Party Account Act.

Although the MPAA provides that the scope of setoff is limited to the debtor's interest in the account, it also allows the bank to contractually modify those limitations. Therefore, it is important for a bank to include provisions in its account agreements authorizing the bank to setoff a debtor's obligations against the entire account balance.

Levies. Levies present many of the same issues as a garnishment. Typically, statutes permitting a creditor to levy upon the property of a debtor restrict those rights to property owned by the debtor. Pursuant to section 524.6-203 of the MPAA, absent a clear and convincing statement of intent to the contrary, the debtor's ownership in the joint account is limited to the debtor's net contributions to the account. The application of the *Enright* decision would seem to result in the scope of the levy being restricted to the funds actually deposited by the debtor or such other amount clearly agreed to by the joint account owner.

However, the determination as to the scope of the levy will depend on the terms of the particular statute authorizing the levy and upon the ownership terms of the joint account. If there is a clear statement of the intent of the parties in the account agreement that they intend an ownership other than based solely on their respective contributions, that statement will modify the ownership rights of the debtor and non-debtor under the MPAA. Additionally, the specific statute authorizing the levy may also affect the scope of the property that is subject to the levy and may offer protection to the bank for surrendering funds pursuant to a levy. As a result of the various factors involved in the statutes governing levies, you should consult with your legal counsel regarding the appropriate response to a specific levy.

Conversion, Good Faith and Punitive Damages. If the bank retains the entire joint account balance in response to a garnishment summons or levy, or exercises setoff rights against all of the funds in a joint account, might it be liable to the non-debtor account owner for damages related to the retention or setoff of the non-debtors funds? Although the answer to that question is not clear, there is a potential risk of the non-debtor account owner asserting a claim against the bank for damages arising from a breach of contract or conversion of the non-debtor's funds in these circumstances.

There is also the additional risk that if the bank is held to have converted the non-debtor account owner's funds, the bank could be exposed to punitive damages as awarded by the jury or the court. Good faith is typically a defense to a claim for punitive damages. However, it may be difficult for the bank to demonstrate that it acted in good faith – particularly if it does not take reasonable steps to make an informed determination regarding the account ownership issues.

What Is a Bank to Do?

1. Because the MPAA recognizes the intent of the parties regarding ownership of the account, you should evaluate, with your legal counsel, whether it is appropriate to add a provision to your deposit account agreements stating that it is the intent of all owners of the account that they are full owners of all of the funds in the account, irrespective of who deposited the funds in the account.

2. The MPAA allows the parties to contractually agree to modify the setoff restrictions. Make sure that your account agreement allows you to setoff against the entire account balance, irrespective of the ownership of the funds in the account and that all account owners have signed the account agreement.

3. In circumstances where you have received a notice of levy or garnishment summons, consider whether to interplead the funds. In appropriate circumstances, the bank can interplead funds (pay into the Court) if there are competing claims to the property (i.e., between the judgment creditor and non-debtor). Depositing the funds with the court will require that your bank incur legal fees and related costs. You should consult with you bank's counsel regarding when the use of this option is appropriate.

4. Consult with bank's counsel regarding the setoff of funds in joint accounts before you exercise your setoff rights.

5. Consult with your bank's counsel to establish procedures for handling specific levy notices received by the bank.

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